



STATE OF INDIANA

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March 7, 2011

Mr. Angello Blackmon
5501 S. 1100 W.
Westville, IN 46391

Re: Formal Complaint 11-FC-45; Alleged Violation of the Access to Public Records Act by the Allen County Jail

Dear Mr. Blackmon:

This advisory opinion is in response to your formal complaint alleging the Allen County Jail ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. My office forwarded a copy of your complaint to the Jail. The Jail's response is included for your reference.

BACKGROUND

According to your complaint, the Jail denied your request for all medical request forms submitted by you from May 1, 2010, through August 31, 2010. The Jail also denied you access to all incident reports concerning you through the same time period. Capt. Ron Rayl responded on behalf of the Jail. In his response, Capt. Rayl advised that the Jail did receive your request, and a letter was sent to you requesting a signed "Authorization to Release Medical Records" form prior to the release of the records. Capt. Rayl stated that it was "our intention to respond to the request for the reports as soon as we receive [sic] a proper request for medical records that includes the proper form."

ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Jail is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Jail's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

An agency may not disclose records declared confidential by state statute or required to be kept confidential by federal law unless access to those records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a). The Standards for Privacy of Individually Identifiable Health Information (commonly called “HIPAA” or “the Privacy Rule”) provides that protected health information may not be used or disclosed except as permitted or required by the Privacy Rule. 45 CFR § 164.502(a). Further, a public agency may not disclose a “patient medical record and chart created by a provider, unless the patient gives written consent under Indiana Code 16-39.” I.C. § 5-14-3-4(a)(9). “HIPPA authorizes a health care provider to disclose protected medical records when the subject of those records has authorized their release.” *See Garnish v. M/V Eyak LLC*, 2008 U.S. Dist. LEXIS 42662 at *8-9 (D. Alaska May 29, 2008). “The corresponding regulations state that ‘a covered entity is permitted to . . . disclose protected health information . . . pursuant to and in compliance with a valid authorization under § 164.508[.]’” *Id.* Here, the Jail responded to your request and denied you access until a “signed HIPPA approved Authorized Release of Medical Information” form was provided. In my opinion, the Jail has sustained its burden of proof under the APRA that HIPAA bars the release of the medical records requested here until consent is provided. Upon receipt of a signed release form from you, I trust that the Jail will provide you with all responsive records.

CONCLUSION

For the foregoing reasons, it is my opinion that the Jail did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Capt. Rayl